

Tombstone Epitaph.

VOL. IX.

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NO. 9.

WATER RIGHTS.

THE LAW IN REGARD TO THEM.

The Ironclad Measures Adopted by the Last Legislature to Protect the Honest Granger.

CHAPTER I.

RIPARIAN RIGHTS.

(Approved March 10, 1887.)

Sec. 1. The common law doctrine of Riparian Water Rights shall not obtain or be of any force or effect in this Territory. (Took effect immediately.)

CHAPTER II.

IRRIGATING CANALS AND ACEQUIAS.

Sec. 1. All rivers, creeks and streams of running water in the Territory of Arizona are hereby declared public and applicable to the purposes of irrigation and mining, as hereinafter provided.

Sec. 2. All rights in Acequias or irrigating canals heretofore established shall not be disturbed, nor shall the course of such Acequias be changed without the consent of the proprietors of such established rights.

Sec. 3. All the inhabitants of this Territory who own or possess arable and irrigable lands shall have the right to construct public or private Acequias, and obtain the necessary water for the same from any convenient river, creek, or stream of running water.

Sec. 4. Whenever such public or private Acequias shall necessarily run through the lands of any private individuals not benefited by said Acequias, the damages resulting to such private individuals, on the application of the parties interested, shall be assessed by the Probate Judge of the proper county in a summary manner.

Sec. 5. No inhabitant of this Territory shall have the right to erect any dam or build a mill, or place any machinery, or open any sluice, or make any dyke, except such as are used for mining purposes or the reduction of metals, as provided for in sections six and seven of this chapter, that may impede or obstruct the irrigation of any lands or fields, as the right to irrigate the fields and arable lands shall be preferable to all others; and the justices of the peace of the respective precincts, shall hear and determine the question relative to all such obstructions in a summary manner, and cause the removal of the same by order, directed to the Constable of the precinct or sheriff of the county, who shall proceed to execute the same without delay.

Sec. 6. Where reduction works or other mining apparatus shall be placed upon lands previously held for agricultural purposes, the person or persons so holding such lands shall be entitled to remuneration from the person or persons erecting or owning said reduction works or mining apparatus. The amount of remuneration shall be adjudged by three or five disinterested persons or by the Probate Judge, as the parties interested shall agree, and in case such agreement cannot be made then the party injured may bring suit for damages.

Sec. 7. When any ditch or Acequia shall be taken out for Agricultural purposes, the person or persons so taking out such ditch or Acequia shall have the exclusive right to the water, or so much thereof as may be necessary for said purposes and it at any time the water so required shall be taken for mining operations, the person or persons owning said water shall be entitled to damages to be assessed in the manner provided in section six of this chapter.

Sec. 8. All by-paths or footpaths across any cultivated fields are prohibited under penalty not to exceed ten dollars for the benefit of the public Acequia, to be assessed in a summary manner by the Justice of the Peace of the precinct, and if the person so offending shall not have wherewith to pay the fine, he shall be adjudged and sentenced to work ten days on the public Acequia.

Sec. 9. All owners and proprietors of arable and irrigable land, bordering on or irrigable by any public Acequia, shall labor on such public Acequia, whether such owners or proprietors cultivate the land or not.

Sec. 10. All persons interested in a public Acequia whether owners or lessees of land shall labor thereon in proportion to the amount of land owned or held by them, and which may irrigated or subject to irrigation.

Sec. 11. It being impracticable to properly inclose the fields of this Territory, all animals shall be kept under a shepherd so that no injury may result to the fields, and if any damage should result it shall be paid by the owner of the animals causing the same, to be assessed by the Justice of the Peace of the precinct in a summary manner and paid to the person or persons whose fields may have been damaged.

Sec. 12. In case a community or people desire to construct an Acequia in any part of this Territory and the persons desiring to construct the same are owners or proprietors of the land upon which they design constructing the said Acequia, no one shall be bound to pay damages for such land, as all persons interested in the construction of said Acequia are to be benefited thereby.

Sec. 13. Immediately after the publication of this chapter, it shall be the duty of the several Justices of the Peace of this Territory to call together in their respective precincts all the owners and proprietors of land, irrigated by any public Acequia for the purpose of electing one or more overseers for said Acequia for the corresponding year.

Sec. 14. The manner of conducting such elections and the number of overseers shall be regulated by the Justices of the Peace of their respective precincts and the only persons entitled to vote at said elections shall be the owners and proprietors of the land irrigated by said Acequias.

Sec. 15. The pay and perquisites of said overseer shall be determined by a majority of the owners and proprietors of the lands irrigated by said Acequias, and paid by them.

Sec. 16. It shall be the duty of the overseer to superintend the opening, excavations and repairs of said Acequias; to apportion the number of laborers furnished by the owners and proprietors to regulate them according to the quantity of land to be irrigated by each one from said Acequia, to distribute and apportion the water in proportion to the quantity to which each one is entitled according to the land cultivated by him; and in making such apportionment, he shall take into consideration the nature of the seed sown or planted, the crops and plants cultivated; and to conduct and carry on such distribution with justice and impartiality.

Sec. 17. During years when a scarcity of water shall exist, owners of fields shall have precedence of the water for irrigation, according to the dates of their respective titles or their occupation of the lands, either by themselves or their grantors. The oldest titles shall have precedence.

Sec. 18. It shall be the duty of each of the owners and proprietors to furnish the number of laborers required by the overseer, at the time and place he may designate for the purposes mentioned in the foregoing section and the time he may deem necessary.

Sec. 19. If any overseer of any public Acequia after having undertaken to serve as such shall wilfully neglect or refuse to fulfill the duties required of him by this chapter, or conduct himself with impropriety or injustice in his office as overseer, or take any bribe in money, property or otherwise, as an inducement to act improperly, or neglect the duties of his office, he shall be fined for each of said offenses in a sum not exceeding one hundred dollars nor less than fifty dollars, to be recovered before any Justice of the Peace of the county, one-half of which shall be paid to the county and the other half to the person bringing suit for the same, the said suit to be brought in the name of the Territory of Arizona, and said overseer on being convicted a second time shall be removed from his office by the Justice of the Peace of the precinct, and shall take such pay and perquisites as may be due him for services rendered.

Sec. 20. Upon such removal, the Justice of the Peace shall order a new election to fill the vacancy thereby occasioned which shall be conducted in the manner prescribed in the thirteenth and fourteenth sections of this chapter.

Sec. 21. If the owner or proprietor of land irrigated by such Acequia shall neglect or refuse to furnish the number of laborers required by the overseer as required in the eighteenth section of this chapter, after having been duly notified by the Overseer, he shall be fined for each offense in a sum not exceeding ten dollars for the benefit of said Acequia, which shall be recovered by the Overseer before any Justice of the Peace in the county, and in such case the Overseer shall be a competent witness to prove the offense or any fact that may serve to constitute the same.

Sec. 22. If any person shall in any manner interfere with, impede or obstruct any of said Acequias or use the water from, without the consent of the Overseer, except as provided in section seven of this chapter, during the time of cultivation, he shall pay for each offense a sum not exceeding ten dollars, which shall be recoverable in the manner prescribed in the foregoing section for the benefit of said Acequia; and he shall further pay all damages that may have occurred to the injured parties; and if said person has not wherewith to pay such fine and damages he shall be sentenced to fifteen days labor on the said public Acequia.

Sec. 23. All fines and forfeitures, recovered for the use and benefit of any public Acequia, shall be applied by the Overseers to the improvements and excavations and repairs which may be necessary on said Acequia and for the construction of bridges, where they may be crossed by any public street or road.

Sec. 24. In all cases of conviction under this chapter, an appeal shall be allowed to the Probate Court, which appeal shall be taken and conducted as all other appeals from the decisions of the Justice of the Peace.

Sec. 25. The regulations of Acequias which have been worked according to the laws and customs of Sonora and the usages of the people of Arizona shall remain as they were made and used up to this day, and the provisions of this chapter shall be enforced and observed from the day of its publication.

Sec. 26. All plants and trees of any description, growing on the bank of any Acequia shall belong to the owners of the land through which said Acequia may run.

Sec. 27. Any person owning lands which may include a spring or a stream of running water, or owning lands upon a river where there is not population sufficient to form a public Acequia may construct a private Acequia for his own uses, subject to his own regulations, provided it does not interfere with the rights of others.

Sec. 28. All laws conflicting with the provisions of this chapter are hereby repealed.

OFFICIAL PROCEEDINGS.

TOMBSTONE, Sept. 27, 1887.

Board met pursuant to adjournment at 10 o'clock a. m.

Present—D. Cohn, Chairman, and Supervisors Frank L. Moore and T. J. White.

On motion, which was carried by an unanimous vote, it was ordered that the Sheriff be and he is hereby authorized to offer a reward of \$500 for the capture and conviction of the murderer of Nicholas McCormick, and that a notice of such reward be published by said Sheriff.

Bids for bridges over the San Pedro river near Lewis Springs were acted upon.

W. W. Woodman, \$1,000 and \$1250; W. G. Dumont, \$900; J. H. Witherspoon; \$1250 and \$1300.

The bid of W. G. Dumont being the lowest it was accepted by the unanimous vote of the Board and the contract awarded him, and he is hereby notified to enter into contract and bond.

Bids for extension of Benson bridge were opened:

Wm. Ohnesorgen, \$530; H. Gerwein, \$610; W. G. Dumont, \$760.

The bid of Wm. Ohnesorgen being the lowest it was accepted by the unanimous vote of the Board, and the contract awarded him, and he is hereby notified to enter into contract and bond.

By unanimous vote of the Board the Clerk was instructed to notify Nash & Tilden that the publication of the proceedings of the Board is discontinued in the Tombstone Prospector, a contract having been entered into this day with Reppy & Peck for the publication of the same in the Tombstone Epitaph.

The bid of H. J. Peto being the only bid for furnishing drugs to the County Hospital, by the unanimous vote of the Board the bid was rejected for insufficiency.

A petition in accordance with law having been received asking the division of the Fairbanks road district, it was therefore upon motion unanimously ordered that the roads from Hill's Ranch to the Boston Mill and from Fairbanks across the San Pedro river, and including each and every of the streets through and in the unincorporated towns of Fairbank and Contentment, and the country included within three miles of the said roads, are hereby segregated from the Fairbank Road District, and are hereby declared as composing the Grand Central Mill Road District, and S. W. Wood is hereby appointed Road Overseer of said Grand Central Mill Road District and required to give an official bond in the sum of \$500 for faithful performance of his duties.

The Board adjourned to meet at 10 o'clock a. m., Sept. 28.

Approved: DAVID COHN,

Chairman.

Attest: WM. D. MONMONIER, Clerk.

TOMBSTONE, Sept. 28, 1887.

Board met pursuant to adjournment at 10 o'clock a. m.

Present—D. Cohn, Chairman, and Supervisor, T. J. White and F. L. Moore.

Complaint being made to the Board that the jail at Wilcox is kept in an unclean condition, it is hereby ordered by unanimous vote of the Board that the jailer be and is instructed to notify the jailer that the jail must be kept in a state of cleanliness; otherwise other steps will be taken.

By unanimous vote of the Board it is ordered that water closets be built at Benson and Bisbee in connection with the jails.

The following bills were allowed by unanimous vote of the Board:

J. W. Cameron, Painting Hospital, \$47.50.

On motion the Board adjourned to meet at 10 o'clock a. m., October 1, 1887.

Approved: D. COHN,

Chairman.

Attest: WM. D. MONMONIER, Clerk.

Climax chewing tobacco only 50 cents a plug at the Willows cigar-store.

The celebrated J. H. White butter can be bought only at Wolcott's. This is its edge.

The best butter in town at Wolcott's. The J. H. White brand.

ANOTHER BATTLE.

THE TEWKSBURY-GRAHAM FEUD.

Further Deeds of Violence—Six of the Combatants More or Less Seriously Wounded and One Fatally Shot—Lewis Parker Missing.

Tonto Basin has added another chapter of blood to its already crimson history. Letters arrived here to day, in the southern mail, from Payson, to a private individual, giving meager details of the bloody event. These letters were from four different parties, who are not connected with either of the opposing factions, and all agree as to the facts. One is dated the 18th instant, the day on which the last fight occurred, and the latest was of date of the 20th instant, all of them being from reliable citizens of that section. From them it is learned that on the morning of the 18th instant, the Graham party in a body were

LYING IN AMBUSH.

Near the residence of the late John Tewksbury, with the evident intention of taking their foe by surprise. Profiting by past experience, the Tewksburys seemed to be on their guard, and discovering the other party, when both parties fired simultaneously. The fight was kept up for some time, and at its close it was found that the Graham party had sustained a loss of three wounded, being Thomas Graham, Joseph Ellingwood and a man named Middleton. The latter's wounds were supposed to be mortal, and from the fact that John Meadows, justice of the peace at Payson, had been again sent for, it was supposed that he had died, although the messenger who was sent for him had not been informed of it.

THE TEWKSBURYS' LOSS.

In wounded were George Newton and James Tewksberry, neither of whose wounds were considered fatal.

John Meadows, who had made a trip to Pleasant Valley, to hold an inquest on the body of William Graham, William Jacobs and John Tewksbury, had returned and reported that the latter had almost been devoured by hogs before he reached there to hold the inquest and bury it.

The correspondents also confirm previous reports concerning the shooting of Tewksbury and Jacobs, both of whom, they state, were shot from ambush and from behind.

Sheriff Mulvenon and posse were reported to be at Haigle's ranch in Pleasant Valley, although the date of their arrival there was not stated. As they were reported to have left Payson on the 15th instant they were due in Pleasant Valley on the day of the last fight or the day previous.

One correspondent who takes a political view of the affair writes: "Things are progressing finely in Pleasant Valley. Nine Democrats less that we know of, and good chances of the Democratic majority there being still further reduced."

A letter from Sheriff Mulvenon to Under Sheriff Waddell states, that in addition to the above loss reported, Lewis Parker, of the Graham party, is also missing.—Journal-Miner.

Leave your order for the San Francisco Chronicle at Sol Israel's. Price, One month 65 cents; Six months \$4; One year \$7. Payable in advance.

Horses taken to pasture by G. W. Trull, at the Boston Mill Ranch, for \$3 per month.

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PHYSICIAN AND SURGEON. OFFICE on Fifth street, between Fremont and Safford.

DR. W. W. FETTERMAN,

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WILLIAM HERRING. HOWARD F. HERRING.

HERRING & HERRING,

ATTORNEYS AND COUNSELORS AT Law, Toughnut street, Tombstone, Ariz.

W. H. STILWELL,

ATTORNEY AND COUNSELOR AT Law, Fourth street, Tombstone, A. T.

ALLEN R. ENGLISH,

ATTORNEY AND COUNSELOR AT Law, up stairs in County Court House, Tombstone, A. T.

JOHN C. EASTON,

JUSTICE OF THE PEACE, NOTARY Public and Conveyancer. Office in Occidental Hotel, Allen street, Tombstone, A. T.

HENRY G. HOWE,

UNITED STATES DEPUTY MINERAL Surveyor, Tombstone, Arizona. Member of the American Institute of Mining Engineers. Attention given to the care of mines for non-resident owners and corporations. The best of reference given. Correspondence solicited.

W. D. SHEARER,

JUSTICE OF THE PEACE. OFFICE on Fourth street, opposite Occidental Hotel, Tombstone, A. T.

CHAS. D. REPPY,

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